

Article - Tax - General

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§11-403.1.

(a) (1) A marketplace facilitator shall collect the applicable sales and use tax due on a retail sale or sale for use by a marketplace seller to a buyer in this State.

(2) A marketplace seller is not required to collect the applicable sales and use tax under paragraph (1) of this subsection to the extent that the marketplace facilitator collects the applicable sales and use tax.

(b) Except as otherwise provided in this title, unless a buyer is otherwise required by regulation to pay the sales and use tax directly to the Comptroller, the buyer shall pay the sales and use tax to the marketplace facilitator at the time of the taxable sale described under subsection (a) of this section.

(c) A marketplace facilitator, or other appropriate party, shall refund to a buyer the proportionate amount of sales and use tax that the buyer has paid if:

(1) (i) a sale is rescinded or canceled; or

(ii) the property sold is returned to the marketplace facilitator or marketplace seller; and

(2) the purchase price is wholly or partially repaid or credited.

(d) A marketplace facilitator shall report the sales and use tax collected under this section separately from the sales and use tax collected by the marketplace facilitator on taxable sales made directly by the marketplace facilitator, or an affiliate of the marketplace facilitator, to buyers in this State.

(e) (1) A class action may not be brought against a marketplace facilitator in a court of this State on behalf of buyers arising from or in any way related to an overpayment of sales or use tax collected on sales facilitated by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim.

(2) Paragraph (1) of this subsection may not be construed to affect a buyer's right to seek a refund under subsection (c) of this section or Title 13, Subtitle 9 of this article.

(f) (1) This subsection does not apply if a marketplace facilitator and a marketplace seller are related entities.

(2) A marketplace facilitator is not liable for a failure to collect the correct amount of sales and use tax due under this section if the marketplace facilitator demonstrates to the satisfaction of the Comptroller that the failure was the result of insufficient or incorrect information provided by the marketplace seller.

(g) Nothing in this section affects the obligation of a buyer to remit the applicable sales and use tax for any taxable sale for which a marketplace facilitator fails to collect and remit the applicable sales and use tax.

(h) (1) A marketplace facilitator and marketplace seller may apply to the Comptroller for a waiver of the collection requirement under this section if:

(i) the marketplace seller is a communications company that is publicly traded or is controlled, directly or indirectly, by a company that is publicly traded;

(ii) the marketplace facilitator and marketplace seller enter into an agreement that the marketplace seller will collect and remit all applicable sales and use taxes imposed under this title; and

(iii) the marketplace seller provides evidence to the marketplace facilitator that the marketplace seller is licensed under § 11-702 of this title to engage in the business of an out-of-state vendor in the State or a retail vendor in the State.

(2) If the waiver under paragraph (1) of this subsection is authorized:

(i) the marketplace seller subject to the agreement under paragraph (1) of this subsection shall collect and remit the sales and use tax imposed under this title;

(ii) the marketplace facilitator is not required to collect or remit the sales and use tax imposed under this title; and

(iii) the marketplace facilitator is not liable for the failure of a marketplace seller to collect and remit any sales and use tax imposed under this title.

(3) The Comptroller shall adopt regulations that establish:

(i) the criteria for obtaining a waiver under this subsection;
and

(ii) the process and procedure to apply for a waiver.

(i) (1) If the Comptroller conducts an audit for compliance with this section, the Comptroller may audit only the marketplace facilitator for sales made by a marketplace seller that are facilitated by the marketplace facilitator.

(2) The Comptroller may not audit the marketplace seller for sales facilitated by the marketplace facilitator for which the marketplace facilitator collected or should have collected the sales and use tax due.

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